

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NOS. 2019-224-E and 2019-225-E - ORDER NO. 2020-796

DECEMBER 18, 2020

IN RE: Docket No. 2019-224-E – South Carolina)	ORDER GRANTING
Energy Freedom Act (House Bill 3659))	RECONSIDERATION OF
Proceeding Related to S.C. Code Ann.)	ORDER NO. 2020-715
Section 58-37-40 and Integrated Resource)	
Plans for Duke Energy Carolinas, LLC)	
and)	
Docket No. 2019-225-E – South Carolina)	
Energy Freedom Act (House Bill 3659))	
Proceeding Related to S.C. Code Ann.)	
Section 58-37-40 and Integrated Resource)	
Plans for Duke Energy Progress, LLC)	

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Joint Petition for Reconsideration of Order No. 2020-715 (“the Joint Petition”) by the Office of Regulatory Staff (“ORS”), who submitted the Joint Petition with and on behalf of Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, the South Carolina Solar Business Alliance, Inc., Vote Solar, Cherokee County Cogeneration Partners, LLC, Nucor Steel – South Carolina, and the Southern Environmental Law Center on behalf of the South Carolina Coastal Conservation League and the Southern Alliance for Clean Energy (collectively referred to herein as “Joint Petitioners”), pursuant to S.C. Code Ann. Section 58-27-2150 and S.C. Code Ann. Regs. 103-825 and 103-854, and applicable South Carolina law.

After exchanges between the Commission’s Hearing Officer and the parties, the Commission issued Order No. 2020-715 on October 21, 2020, which adopted the following procedural schedule:

- DEC/DEP Direct Testimony due November 13, 2020;
- ORS and Intervenor Direct Testimony due February 5, 2021;
- DEC/DEP Rebuttal Testimony due March 19, 2021;
- ORS and Intervenor Surrebuttal Testimony due by Noon on March 30, 2021;
- Witness & Testimony Order and Witness Panels (the latter only possible if hearing is nonvirtual) due by Noon on March 30, 2021;
- A hearing would begin at the Commission on April 5, 2021;
- Proposed Orders due on May 7, 2021; and
- Final Order due on June 28, 2021.

In issuing this Order, the Commission stated that this schedule allowed a “more reasonable time for the Commission to hold its hearing, to properly deliberate and to prepare its final order in these cases.” However, although ORS states in the Joint Petition that it supports the Commission’s effort to ensure this IRP schedule allows a reasonable amount of time for the Commission to hold the hearing, properly deliberate, and prepare its final orders in these cases, ORS asserts that the Commission should reconsider Order No. 2020-715 for four specific reasons.

First, ORS believes that this schedule is a “stark departure” from schedules set for the Dominion Energy South Carolina, Inc. (“Dominion”) and Lockhart Power Company (“Lockhart”) IRP cases. ORS notes that in Dominion, the Commission scheduled more than one month between rebuttal and surrebuttal filing dates. In Lockhart, there was a twenty-two-day interval between the two. ORS points out that in the instant case, there are

really two cases in one. Second, the Joint Petitioners through ORS state that the brevity of the presently scheduled time period between rebuttal and surrebuttal prevents ORS and intervenors from conducting discovery as to the rebuttal. Third, the Joint Petitioners through ORS point out a lack of time between the filing of surrebuttal testimony and the hearing date. They note that this reduces the chance of stipulations or settlement. Further, according to the Joint Petitioners, through ORS, the short timeframe makes it difficult to issue discovery on surrebuttal or make sufficient prehearing motions in advance of the hearing. Fourth, although undefined, the Joint Petitioners, through ORS state that some of their witnesses have conflicts with the procedural schedule in the Commission's Order. As a result, ORS requests that the Commission reconsider Order No. 2020-715, and adopt the procedural schedule proposed by the Companies on September 28, 2020, which was agreed upon by many of the parties in these dockets. In the alternative, ORS states that, in an effort to mitigate the concerns raised by the Commission in its Order No. 2020-715, ORS and the other parties propose an alternative schedule as follows:

- DEC/DEP Direct Testimony due November 13, 2020;
- ORS and Intervenor Direct Testimony due February 5, 2021;
- DEC/DEP Rebuttal Testimony due March 19, 2021;
- ORS and Intervenor Surrebuttal Testimony due by Noon on April 15, 2021;
- Witness & Testimony Order and Witness Panels (the latter only possible if hearing is nonvirtual) due by Noon on April 19, 2021;
- A hearing would begin at the Commission on April 26, 2021;
- Proposed Orders due on May 21, 2021; and
- Final Order due on June 28, 2021.

According to ORS, this alternate schedule gives ORS and intervenors a reasonable amount of time to review company rebuttal and allows the parties to work out discovery

issues. ORS also believes that this alternate schedule allows a reasonable amount of time for the Commission to hold its hearing, properly deliberate, and prepare its final order in the cases.

Although S.C. Code Ann. Section 58-27-2150 determines the timeframe in which a Petition for Rehearing can be filed, and how long the Commission has until it must rule on the Petition, S.C. Code Ann. Regs. 103-825(4) sets out the criteria the Commission must consider when ruling on such a petition. Under the regulation, a Petition for Rehearing or Reconsideration must set forth clearly and concisely:

- 1) The factual and legal issues forming the basis for the petition;
- 2) The alleged error or errors in the Commission order; and
- 3) The statutory provision or other authority upon which the petition is based.

Analyzing the Petition for Reconsideration before the Commission herein for compliance with the Commission Regulation, the Joint Petitioners through ORS have complied with stating the factual and legal issues forming the basis for the petition. The Joint Petitioners, through ORS, also allege what they state are errors in the Order. However, with regard to the third criterion, there is no real statutory provision or other authority governing the Commission's decision on this Joint Petition. The Joint Petitioners through ORS do assert, however, that the schedule outlined by Order No. 2020-715 is inconsistent with IRP procedural dates scheduled for Dominion and Lockhart, that discovery and prehearing motions are difficult with some of the dates, and that the parties have procedural conflicts with some of the procedural dates in Order No. 2020-715. There is no governing law that specifies what constitutes an appropriate schedule, so long as due process is afforded to all parties. The procedural dates are discretionary with the Commission.

In further examining this matter, the Commission does believe that establishing consistent procedural dates with other IRP matters would be reasonable in this matter, in that the parties can have more time for Intervenor and ORS review of the company rebuttal, and for the parties to work out any necessary discovery issues while complying with the discovery timelines set forth by the Commission in the Commission Regulations. This Commission agrees that the alternative schedule as proposed by the Joint Petitioners accomplishes these goals. The Commission also recognizes that the parties will be working with two separate cases, rather than reviewing a single case as is done with other utilities. Further, although less time is allowed in the alternative schedule for the Commission to hold its hearing, properly deliberate, and prepare its final order in the cases than in the schedule set by Order No. 2020-715, the Commission does hold that the alternate schedule as proposed still provides adequate time for these Commission functions. Also, hopefully, any potential witness conflicts are also eliminated by the alternate schedule. Accordingly, we hereby grant reconsideration of Order No. 2020-715, and hold that the alternative procedural schedule proposed in the Petition for Reconsideration shall be the procedural schedule for these Dockets: That schedule is as follows:

- DEC/DEP Direct Testimony due November 13, 2020;
- ORS and Intervenor Direct Testimony due February 5, 2021;
- DEC/DEP Rebuttal Testimony due March 19, 2021;
- ORS and Intervenor Surrebuttal Testimony due by Noon on April 15, 2021;
- Witness & Testimony Order and Witness Panels (the latter only possible if hearing is nonvirtual) due by Noon on April 19, 2021;
- A hearing would begin at the Commission on April 26, 2021;
- Proposed Orders due on May 21, 2021; and

- Final Order due on June 28, 2021.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Florence P. Belser, Vice Chairman
Public Service Commission
of South Carolina

